

No. 76-1045

Supreme Court, U. S.

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MICHAEL RODAK, JR., CLERK

**In the
Supreme Court of the United States**

OCTOBER TERM, 1976

ARTHUR DWYER, et al.,

Petitioners,

vs.

CLIMATROL INDUSTRIES, INC., et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court
of Appeals for the Seventh Circuit

**BRIEF FOR RESPONDENT
CLIMATROL INDUSTRIES, INC.
IN OPPOSITION TO PETITION**

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QUESTIONS PRESENTED

The questions Respondent Climatrol Industries, Inc. be-
lieves dispositive of this case are as follows:

1. Did Defendant Unions have authority to negotiate the December 15, 1971 plant closedown agreement, including the amendments to the pension plan agreement?

2. If Defendant Unions lacked authority to negotiate the plant closedown agreement, did the individual Petitioners ratify that agreement?

3. In the absence of the amendments contained in the plant closedown agreement, did the pension plan agreement require Respondent Climatrol Industries, Inc. to fully fund the pension plan upon its termination?

STATEMENT OF THE CASE

On March 1, 1970, Climatrol Industries, Inc. (hereinafter also referred to as "Climatrol") and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.), and its Local No. 409 (hereinafter referred to as "Defendant Unions") entered into a collective bargaining agreement and pension plan agreement covering employees employed by Climatrol at its Milwaukee, Wisconsin facility. On December 1, 1970, Fedders Corporation, a New York corporation, acquired all the assets of Climatrol and assumed all the obligations of Climatrol under the March 1, 1970 collective bargaining agreement and pension plan agreement. Defendant Unions were advised of and, by their actions and words, agreed to the substitution of Fedders Corporation for Climatrol as "the Company" obligated under the terms of the collective bargaining agreement and pension plan agreement.

On December 15, 1971, Fedders Corporation, as "the Company" then obligated under the terms of the collective bargaining agreement and pension plan agreement, and Defendant Unions, as exclusive bargaining representative of the employees covered by those agreements, including all the Petitioners, negotiated a plant closedown agreement

requiring payment of additional funds by Fedders Corporation to the pension plan Trust Fund, discharging "the Company" from further financial obligation under the pension plan agreement, providing for the subsequent termination of the pension plan agreement and the collective bargaining agreement, and relieving "the Company" of all further obligations and liabilities to Defendant Unions and their members. Fedders Corporation fulfilled all its obligations pursuant to the plant closedown agreement, including the additional payment to the pension plan Trust Fund in the amount of \$160,000, and, in accordance with the agreement, closed the plant and terminated the bargaining unit employees.

On April 5, 1973, Petitioners, all former employees of Climatrol and former members of Defendant Unions, brought this action pursuant to Section 301(a) of the Labor Management Relations Act, 29 U.S.C. §185(a), alleging breach of the collective bargaining agreement and pension plan agreement executed March 1, 1970, between Climatrol and Defendant Unions. On October 6, 1975, the United States District Court for the Eastern District of Wisconsin granted the motions of Climatrol and Defendant Unions for summary judgment and entered a judgment dismissing the action on its merits. (Appendix to Petition, pp. 110-113) On November 1, 1976, the United States Court of Appeals for the Seventh Circuit affirmed the decision of the District Court. (Appendix to Petition, pp. 101-109)

ARGUMENT

I.

Defendant Unions had authority pursuant to the terms of the pension plan agreement to negotiate the amendments to that agreement.

Petitioners' fundamental assertion throughout these proceedings has been that Defendant Unions' status as exclusive bargaining representative pursuant to Section 9(a) of the National Labor Relations Act, as amended, 29 U.S.C. §159(a), did not include authority to negotiate the amendments to the pension plan agreement contained in the plant closedown agreement. However, Section 12.01 of the pension plan agreement stated:

"The Plan may be modified, altered, or amended upon mutual agreement of the Company and the Union."

On the basis of that provision, the Court of Appeals concluded as follows:

"We agree with the district court that the plaintiffs had no vested interest in this pension program. The court found that plaintiffs' rights under the pension plan agreement were subject to the terms of the contract which provided for the right to modify. Having reserved such right to modify, the contracting parties could do so without the express consent of those who might otherwise benefit therefrom. . . .

"In light of the foregoing, we hold that plaintiffs did not have an unalterable vested interest in the pension plan agreement." (Appendix to Petition, p. 106)

Thus, whether or not Defendant Unions would have had independent statutory authority to negotiate the pension plan amendments, they had such authority pursuant to the terms of the contract which created the benefits in question. Accordingly, the issue here is one of contract rather than statutory interpretation. On that issue, the Court of Appeals, the District Court, and the parties to the contract are all in agreement that Defendant Unions and Fedders Corporation properly adopted the amendments to the pension plan agreement contained in the plant closedown agreement.

II.

There is no conflict between the decisions below and the cases cited by Petitioners.

In support of their petition, Petitioners contend that the decisions below conflict with the holdings of this Court in *Elgin, J. & E. R. Co. v. Burley*, 325 U.S. 711 (1945), and *Elgin, J. & E. R. Co. v. Burley*, 327 U.S. 661 (1946), and the application of those opinions in *Hauser v. Farwell, Ozmun, Kirk and Company*, 299 F.Supp. 387 (D.C. Minn. 1969). (Petition, pp. 5-6) Each of those decisions dealt with the statutory authority of bargaining representatives to negotiate concerning rights which had accrued to individual employees. In the present action, as previously stated, the applicable agreement was interpreted to preclude any "vested interests," all such interests being subject to amendment by agreement between the Company and Defendant Unions.

Moreover, the amendments in question here did not relate to the use of *funds previously contributed*, but specifically were limited to *future contributions* to the pension plan. As stated by the Court of Appeals,

"In *Hauser*, the employer and the union were attempting to modify the allocation of *funds previously contributed to the pension plan*, and accordingly were no longer subject to collective bargaining by the union.

"By contrast, however, in the case at bar, the closedown agreement affected only *future* contributions to the pension plan, a subject over which the defendant Unions, as the exclusive bargaining representative of the employees involved, had complete and sole authority to negotiate. Section 9(a), National Labor Relations Act, as amended, 29 U.S.C. §159(a)." (Appendix to Petition, pp. 105-106; emphasis in original; footnote omitted)

Finally, in *UAW v. H. K. Porter Company* (E.D. Mich. 1976) (Appendix to Petition, pp. 120-127), the court interpreted the pension plan there at issue to require full funding beyond the termination of the plan. In the present case, on the other hand, the pension plan, as amended, specified the additional contribution required of the Company, which amount was fully paid by Fedders Corporation.

III.

Even if Defendant Unions lacked authority to negotiate the plant closedown agreement, full funding of the pension plan would not be required.

The plant closedown agreement dated December 15, 1971, granted certain severance and vacation pay benefits to employees, including Petitioners. Section 3.04 of the agreement further provided as follows:

"Severance allowances and vacation payment made at the time of termination shall be deemed to be payment in full of all obligations on the part of the Company to the Union and the employees."

In accepting such payments, the individual employees, including each of the Petitioners, effectively ratified the action of Defendant Unions in adopting the plant closedown agreement or, at a minimum, accepted such payment as full satisfaction of any claims they might have had against the Company, including claims pursuant to the collective bargaining agreement or pension plan agreement. See *Cohen v. Sabin*, 452 Pa. 447, 307 A.2d 845 (1973); *Williston on Contracts*, Third Edition §1838, "Definition of Accord and Satisfaction" (1972).

Furthermore, the only obligation of "the Company" pursuant to the pension plan agreement was that stated in Section 9.01, to contribute annually on the basis of a prescribed formula. Section 9.04 of the agreement stated as follows:

"Deposits by the Company in the Trust Fund of the contributions required under this Article [IX] shall be in complete discharge of the Company's financial obligation under this agreement."

Section 12.03 of the pension plan agreement provided that the plan would remain in effect until March 1, 1973, and Article XIII prescribed the basis upon which assets in the plan's Trust Fund would be allocated upon discontinuance of the plan. Thus, even if the plan had not been amended, Company contributions would have been required only through March 1, 1973.¹ By its own terms, the unamended pension plan agreement did not require full funding. In *Hauser v. Farwell, Ozmun, Kirk and Company*, 299 F.

¹ It was this obligation that in part led Fedders Corporation in December 1971 to agree in the plant closedown agreement to make the lump sum contribution of \$160,000 to the pension plan Trust Fund.

Supp. 387 (D.C. Minn. 1969), the case relied upon by Petitioners, the court specifically rejected a similar claim for full funding pursuant to the unamended pension plan. 299 F.Supp. at 397.

Thus, even if Defendant Unions lacked authority to negotiate the plant closedown agreement amending the pension plan agreement, Petitioners would not be entitled to the benefits they now claim.

CONCLUSION

For the reasons stated herein, Respondent Climatrol Industries, Inc. requests the Court to deny the petition.

Respectfully submitted,

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